

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #6	CCRB Case #: 201808934	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 10/28/2018 2:02 AM	Location of Incident: 42nd Street Grand Central subway; Transit District 4 stationhouse; 14th Street Union Square subway.	Precinct: 13	18 Mo. SOL 4/28/2020	EO SOL 12/13/2020	
Date/Time CV Reported Sun, 10/28/2018 7:00 PM	CV Reported At: Precinct	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 10/28/2018 7:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Salvatore Guardì	29770	953933	TB M/TF
2. LT Lyndon Tuckett	00000	923276	TB M/TF
3. DTS Paul Brauer	4133	938111	ESS 01
4. DTS Patrick Ruppert	7102	947444	ESS 01

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Cesar Bermeo	29558	953679	TB M/TF
2. POF Marisol Santana	26037	948273	TB ATU

Officer(s)	Allegation	Investigator Recommendation
A.LT Lyndon Tuckett	Abuse: Inside the 42nd Street - Grand Central subway station, Lieutenant Lyndon Tuckett threatened to remove § 87(2)(b) to the hospital.	
B.LT Lyndon Tuckett	Abuse: Inside of the Transit District 4 stationhouse, Lieutenant Lyndon Tuckett forcibly removed § 87(2)(b) to the hospital.	
C.DTS Paul Brauer	Force: Inside of the 14th Street - Union Square subway station, Detective Specialist Paul Brauer used physical force against § 87(2)(b)	
D.DTS Patrick Ruppert	Force: Inside of the 14th Street - Union Square subway station, Detective Specialist Patrick Ruppert used physical force against § 87(2)(b)	
E.POM Salvatore Guardì	Discourtesy: Outside of the 14th Street - Union Square subway station, Police Officer Salvatore Guardì spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On October 28, 2018, Sergeant Rachid Lora of Transit Borough District #4 called the CCRB and filed this complaint on behalf of § 87(2)(b) who arrived at the Transit Borough District #4 stationhouse earlier that day to file a complaint. That same day, Sgt. Lora also filed a duplicate complaint on § 87(2)(b)'s behalf online via the CCRB's website. This case was received at the CCRB on October 29, 2018.

On October 28, 2018, at approximately 2:02 a.m., Lieutenant Lyndon Tuckett, Police Officer Salvatore Guardi, and Police Officer Cesar Bermeo—all of Transit Borough Manhattan Task Force—stopped and arrested § 87(2)(b) and her friend, § 87(2)(b) inside the 42nd Street–Grand Central subway station in Manhattan for fare evasion. Lt. Tuckett allegedly threatened to forcibly remove § 87(2)(b) to the hospital (**Allegation A: Abuse of Authority**, § 87(2)(g)). Lt. Tuckett, PO Guardi, and PO Bermeo transported § 87(2)(b) and § 87(2)(b) to the Transit Borough District #4 stationhouse, located within the 14th Street–Union Square subway station in Manhattan. Lt. Tuckett ordered § 87(2)(b) to be forcibly removed to the hospital from the holding cell (**Allegation B: Abuse of Authority**, § 87(2)(g)). EMS personnel and two members of the Emergency Services Unit (ESU), Detective Paul Brauer and Detective Patrick Ruppert, responded. Det. Brauer and Det. Ruppert escorted § 87(2)(b) out of the subway station in handcuffs and ankle shackles. By the stairs, § 87(2)(b) dropped her weight to the ground and became uncooperative. Det. Brauer and Det. Ruppert carried § 87(2)(b) out of the station (**Allegations C and D: Force**, § 87(2)(g)). Det. Brauer and Det. Ruppert allegedly “threw” § 87(2)(b) onto the stretcher (**Subsumed within Allegations C and D**). By the ambulance, PO Guardi allegedly stated that § 87(2)(b) was “acting like an animal” and deserved to be “treated like an animal” (**Allegation E: Discourtesy**, § 87(2)(g)). § 87(2)(b) was removed by ambulance to § 87(2)(b), where she underwent psychiatric evaluation before being released back into police custody a few hours later. § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

The investigation did not obtain any video evidence.

Findings and Recommendations

Allegation A—Abuse of Authority: Inside the 42nd Street – Grand Central subway station in Manhattan, Lieutenant Tuckett threatened to remove § 87(2)(b) to the hospital.

The following facts are undisputed. On October 28, 2018, at approximately 2:02 a.m., Lt. Tuckett, PO Guardi, and PO Bermeo stopped § 87(2)(b) and § 87(2)(b) for fare evasion after they “doubled up” while passing through the turnstiles at the 42nd Street Grand–Central subway station in Manhattan. § 87(2)(b) (**Board Review 01**) and § 87(2)(b) were both arrested.

§ 87(2)(b) (**Board Review 02, 03**) alleged that, after she was stopped but before she was transported, Lt. Tuckett threatened to remove her to the hospital.

§ 87(2)(b) (**Board Review 04**) stated that he did not remember whether any officers mentioned § 87(2)(b) going to the hospital when he and § 87(2)(b) were first stopped for

fare evasion, but also did not have a strong recollection of this incident. § 87(2)(b) did not remember what Lt. Tuckett, PO Guardi, and PO Bermeo looked like.

Lt. Tuckett, PO Guardi, and PO Bermeo (**Board Review 06 – 08**) provided generally consistent testimony. The officers had “normal” conversation with § 87(2)(b) when she was first stopped, but none of them remembered the specific contours of the conversation. There was no conversation about § 87(2)(b) going to the hospital. PO Guardi and Lt. Tuckett testified that Lt. Tuckett did not threaten to forcibly remove § 87(2)(b) to the hospital. PO Bermeo testified that he did not remember whether Lt. Tuckett did so, because he did not remember whether Lt. Tuckett and § 87(2)(b) talked to each other at all.

§ 87(2)(g)

Allegation B—Abuse of Authority: At the Transit District #4 stationhouse in Manhattan, Lieutenant Lyndon Tuckett forcibly removed § 87(2)(b) to the hospital.

The following facts are undisputed. Throughout her arrest processing, § 87(2)(b) was verbally upset that she was being fully processed through the court system. § 87(2)(b) was lodged alone in a holding cell at Transit District #4, and repeatedly refused to be fingerprinted while yelling and shaking the bars of the holding cell. Officers attempted to fingerprint § 87(2)(b) multiple times to no avail (**Board Review 08**). § 87(2)(b) never threatened to hurt herself or anyone else. Lt. Tuckett decided to forcibly remove § 87(2)(b) to the hospital due to her noncompliance with fingerprinting, and requested ESU and EMS assistance. Det. Brauer and Det. Ruppert of ESU arrived and carried out Lt. Tuckett’s orders. § 87(2)(b) was transported in an ambulance to § 87(2)(b) for psychiatric evaluation, and released back into police custody for further arrest processing several hours later. § 87(2)(b) was still in the holding cells when § 87(2)(b) last saw her that night, as he was escorted to Central Booking.

§ 87(2)(b) (**Board Review 02, 03**) testified that when she was first stopped, PO Guardi, Lt. Tuckett, and PO Bermeo told her that she was being arrested—rather than released with a desk appearance ticket (DAT)—because she had an open bench warrant. § 87(2)(b) did not believe she had an open warrant. Once she was lodged in the holding cells and became upset, Lt. Tuckett told § 87(2)(b) that she would “rot” in the cells for three days and might have to go to the hospital if she continued refusing to cooperate. § 87(2)(b) refused to go to the hospital.

Lt. Tuckett (**Board Review 05**) testified that before § 87(2)(b) was lodged in the holding cell, he did not believe that her behavior warranted removal to the hospital. Upon the initial stop and during transport, § 87(2)(b) was verbally upset, repeatedly cursed Lt. Tuckett’s parents, and called him “everything but ‘the child of God.’” Yet, Lt. Tuckett believed that § 87(2)(b) emotions were normal for someone who had just been arrested and therefore hoped that § 87(2)(b) would calm down naturally. Once § 87(2)(b) was lodged in the holding cell, she “just went berserk” and “went nuts,” insofar as she was cursing and “racking the gate” of the holding cell. This behavior alone led Lt. Tuckett to believe that § 87(2)(b) was acting irrationally and was therefore a “borderline EDP.” The only physical harm that Lt. Tuckett

was concerned about was a tactical concern that if any of his officers went inside the holding cell to fingerprint § 87(2)(b) they might get hurt due to her “aggression” and their lack of tactical training for such a situation. Lt. Tuckett only articulated this potential tactical safety concern as part of his decision-making calculus for *how* the forcible removal should be effectuated, and as part of his decision to call ESU—not as part of his decision to remove § 87(2)(b) to the hospital.

PO Guardi (**Board Review 06**) denied that § 87(2)(b) was ever “violent” inside the holding cell, and did not remember if she ever shook the bars of the holding cell. Eventually, after approximately one hour of § 87(2)(b) being verbally uncooperative in the holding cell, Lt. Tuckett told PO Guardi, “If she’s going to refuse prints, she’s going to the hospital then.”

PO Berneo (**Board Review 07**) testified that he was only present for part of § 87(2)(b) s time in the holding cell as he left to conduct a bank drop.

PO Marisol Santana, of Transit District #4, testified (**Board Review 09**) that she searched § 87(2)(b) before she was lodged in the holding cells. PO Santana described § 87(2)(b) s behavior as “calm.” § 87(2)(b) was neither yelling nor screaming. PO Santana had no further interactions with, and made no subsequent observations of, § 87(2)(b)

The Pre-Hospital Care Report (PHCR) notes that EMS personnel were called “due to female refusing to be finger printed [sic]” (**Board Review 10**). § 87(2)(b) s medical records note that she was brought in by EMS and NYPD for “refusing to be fingerprinted in precinct.” She was neither suicidal nor homicidal, and “denie[d] medical issues.” § 87(2)(b) was “not combative or violent, per NYPD and EMS.” § 87(2)(b) “explain[ed] [that] she was acting out as she does not want to be arrested.” § 87(2)(b) was ultimately determined not to be in a “psychiatric emergency,” and therefore cleared for arraignment (**Board Review 10**).

When a prisoner refuses to be fingerprinted, arrest processing should continue uninterrupted, all other arrest paperwork should be completed, and the prisoner’s cooperation with fingerprinting should be re-requested at the end of all other arrest procedures. NYPD Patrol Guide Procedure 208-11 (**Board Review 11**). If the prisoner still refuses to comply at that point, the desk officer must place leg restraints on the noncompliant prisoner and “direct that [the] prisoner be brought *directly to the Borough Court Section*,” where the prisoner is to be questioned and her identity is to be verified if noncompliance persists. *Id.*, emphasis added. A prisoner may be brought to a health care facility from the Borough Court Section, however, if he or she is “in need of medical attention.” *Id.* NYPD Patrol Guide Procedure 221-13 (**Board Review 12**) requires that members of service take into protective custody and remove to the hospital any individual that a member of the service reasonably believes is an Emotionally Disturbed Person (EDP), the definition of which is twofold, and applies only if a person both “appears to be mentally ill or temporarily deranged” and “is conducting [herself] in a manner which a police officer reasonably believes is likely to result in serious injury to [herself] or others.”

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C—Force: Inside of the 14th Street Union Square subway station in Manhattan, Detective Specialist Patrick Ruppert used physical force against § 87(2)(b)

Allegation D—Force: Inside of the 14th Street Union Square subway station in Manhattan, Detective Specialist Paul Brauer used physical force against § 87(2)(b)

The following facts are undisputed. After going through the turnstiles, Det. Brauer and Det. Ruppert escorted § 87(2)(b) toward the stairs that lead out of the station. Along the way, § 87(2)(b) was screaming, swearing at Det. Ruppert and Det. Brauer, calling them “crackers,” and crying. Near the bottom of the stairs, § 87(2)(b) became uncooperative and decided to voluntarily drop her weight to the ground. Given § 87(2)(b)’s noncompliance, Det. Brauer and Det. Ruppert picked § 87(2)(b) up and off of the ground, and carried her up the stairs and out of the subway station. No TRI report was prepared in regards.

§ 87(2)(b) (Board Review 02, 03) testified that Det. Brauer and Det. Ruppert “dragg[ed]” her up the stairs while parts of her body were hitting the stairs on the way up. Her head struck an unknown object along the way. Det. Brauer and Det. Ruppert “threw” § 87(2)(b) onto the stretcher. § 87(2)(b) received a scratch on the back of her neck; bruises on her knee, elbow, and underneath her buttocks; and cuts on her wrists from her handcuffs. § 87(2)(b) also sustained pain to her ankle, arms, and wrists. At § 87(2)(b)’s CCRB interview on December 17, 2018, the investigation obtained a photograph of an apparent bruise on her left knee that she alleged was sustained during this incident (Board Review 13).

§ 87(2)(b) (Board Review 04) stated that, although he did not witness this portion of the incident, § 87(2)(b) later informed him that officers were “rough with her” when

escorting her out of the stationhouse. § 87(2)(b) did not see any injuries on § 87(2)(b)'s person at arraignment, but did notice bruising to her arms, back, and legs afterwards.

The PHCR (**Board Review 10**) notes that § 87(2)(b) “decide[d] to throw herself on the floor” while walking to the ambulance, at which point “the two police officers that were alongside her picked her up and prevented her from throwing herself on the floor again.” § 87(2)(b) was “picked up by the two officers from either side and was carried while [she] dragged her feet,” and “was then put on stretcher.” EMS personnel noted that § 87(2)(b) had “no visible injuries,” and was verbally abusive to EMS personnel and NYPD officers. § 87(2)(b)'s medical records further note that § 87(2)(b) did not complain of pain.

Det. Brauer (**Board Review 14**) and Det. Ruppert (**Board Review 15**) provided generally consistent testimony. They both denied “dragging” § 87(2)(b) out of the subway station, and also denied that any parts of § 87(2)(b)'s body hit the ground or any other surfaces or objects while they were carrying her. Det. Brauer and Det. Ruppert carried § 87(2)(b) by her arms and legs—one officer at each end of her body—face-down. § 87(2)(b) was being carried completely in the air. Along the way, § 87(2)(b) was yelling at swearing at Det. Brauer and Det. Ruppert. They did not observe any injuries on her person, nor did she complain of any injuries at the time.

PO Guardi (**Board Review 06**) and PO Bermeo (**Board Review 07**) each testified that they went to the hospital along with § 87(2)(b) and did not observe any injuries on her person, but did not see her being escorted from the stationhouse up to the ambulance.

Lt. Tuckett (**Board Review 05**) and PO Santana (**Board Review 09**) each testified that they never saw § 87(2)(b) outside of the stationhouse after she was lodged in the holding cell.

NYPD officers are authorized to “[a]pply no more than the reasonable force necessary to gain control” of an “uncooperative subject.” NYPD Patrol Guide Procedure 221-02 (**Board Review 16**). In all situations, “any application of force must be reasonable under the circumstances.” NYPD Patrol Guide Procedure 221-01 (**Board Review 17**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E—Discourtesy: Outside of the 14th Street Union Square subway station in Manhattan, Police Officer Salvatore Guardi spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged (**Board Review 02, 03**) that, by the ambulance, PO Santana asked why § 87(2)(b) was being treated as she was. PO Guardi replied that she had been “acting like an animal” and deserved to be “treated like an animal.”

§ 87(2)(b) (**Board Review 04**) was not present for this portion of the incident.

PO Guardi (**Board Review 06**) denied saying that § 87(2)(b) was “acting like an animal” or that she deserved to be “treated like an animal.” Det. Brauer (**Board Review 13**), Lt. Tuckett (**Board Review 05**), PO Bermeo (**Board Review 07**), and PO Santana (**Board Review 09**) either denied being present for any such interaction, or acknowledged their presence and denied that PO Guardi made the alleged discourteous statements.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer Histories

- This is the first and only CCRB complaint to which § 87(2)(b) has been a party (Board Review 24).
- § 87(2)(b)
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- Lt. Tuckett has been a member of service for 20 years and has been named a subject in four other CCRB complaints and five other allegations. None were substantiated. § 87(2)(g)
- Det. Brauer has been a member of service for 14 years and has been named a subject in 17 other CCRB complaints and 40 other allegations, only one of which was substantiated.
 - CCRB case #201106803 involved a substantiated allegation of a stop. The Board recommended Command Discipline. The NYPD imposed Instructions.
 - § 87(2)(g)
- Det. Ruppert has been a member of service for 11 years and has been named a subject in two other CCRB complaints and two other allegations. Neither was substantiated. § 87(2)(g)
- PO Guardi has been a member of service for six years and has been named a subject in one other CCRB complaint and one other allegation, which was not substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) initially accepted mediation on December 17, 2018. Accordingly, this case was sent to the Mediation Unit on March 13, 2019, but was returned for investigation on April 9, 2019, after § 87(2)(b) decided to pursue an investigation, instead.
- A FOIL request for Notices of Claim filed by either § 87(2)(b) or § 87(2)(b) regarding this incident was submitted to the NYC Office of the Comptroller on July 28, 2019. To date, this request is still pending (**Board Review 26**).
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: #06

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date